IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 214 OF 2004

Shri Sayaji Gopala Jadhav & anr. ... Appellants

V/s

Shri Pralhad Sayaji Jadhav ... Respondents

Mr. Rajeshirke holding for Mr. M.S.Karnik for the appellants.

None for the respondents.

CORAM: P.V. KAKADE, J.
DATED: 7TH JUNE, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Third Addl. District Judge, Nasik, dismissing his appeal and confirming the decree passed by the Trial Court in R.C.S. No. 485 of 1999 for partition and separate possession of plaintiff's 1/3 share.

2. The plaintiff filed the suit for partition against his father defendant No.1 and step-brother defendant No.2, of the suit property. He claimed 1/3 share in the suit property and separate possession. He pleaded that

defendant No.1, few years after his marriage with Laxmibai (i.e. mother of plaintiff), drove her out and performed another marriage with Hirabai. Plaintiff submitted that he was born out of the wedlock of defendant No.1 and Laxmibai. This contention was challenged by the defendant No.1. The defendant No.1 also denied his marriage with Laxmibai and the allegation that he drove out her out of his house. According to the defendant No.1, the plaintiff had no right to claim partition in the suit property. Alternatively, it was submitted that plaintiff's suit is barred by limitation as the suit ought to have been filed within a period of 12 years from the date on which he attained majority. The learned Trial Judge adjudicated the suit on merits and partly decreed the suit and held that the plaintiff had 1/3 share in the suit property and he was entitled to the possession to that share.

3. The appeal was carried to the District Court. The learned appellate Court Judge endorsed to the findings recorded by the Trial Court and held that the plaintiff had established his allegations and it was further held that it was not barred by limitation and, therefore, the appeal came to be dismissed. Hence the present appeal.

4. At the outset, it may be noted that, all the issues involved are the issues of fact and there is no substantial question of law involved in the present appeal. The paternity factum of the plaintiff was held to be proved satisfactorily and once that was established, it was concluded that he was co-sharer in the property and was having 1/3 share therein. It was also held that the plaintiff being co-sharer, was not ousted from the property and, therefore, there was no question of limitation in this regard. It is needless to mention that, in this case, a co-owner is claiming to have perfected right on the basis of adverse possession. Such a owner has to prove the ouster of other co-owner to the knowledge of all concerned, only then he can claim to have perfected right on the basis of adverse possession against a co-owner. This being the legal position, I am satisfied that both the Courts below have rightly held that the suit was not barred by law of limitation.

5. In the result, the appeal deserves to be dismissed and stands dismissed.

(P.V. Kakade, J.)